

## Securities and Exchange Commission

## § 204.51

(c) *Responsibility of the Program Official.* (1) The Program Official shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The Program Official shall be responsible for:

(i) Ensuring that each certification of debt sent to a paying agency is consistent with the pre-offset notice (§204.33, Pre-offset notice).

(ii) Obtaining hearing officials from other agencies pursuant to §204.36, Granting of a pre-offset hearing.

(iii) Ensuring that hearings are properly scheduled.

### § 204.44 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

## Subpart C—Tax Refund Offset

AUTHORITY: 5 U.S.C. 8347(a) and 8461(g), 31 U.S.C. 3720A.

SOURCE: 58 FR 64372, Dec. 7, 1993, unless otherwise noted.

### § 204.50 Purpose.

This subpart establishes procedures for the Commission to refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of an individual, sole proprietorship, partnership, corporation, nonprofit organization or any other form of business association, (31 U.S.C. 3720A(4)) owing debts to the Commission. In the case of refunds of business associations, this section applies only to refunds payable on or after January 1, 1995 (31 U.S.C. 3720A(5)). It specifies the agency procedures and the rights of the debtor applicable to claims referred under the Federal Tax Refund Offset Program for the collection of debts owed to the Commission.

### § 204.51 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that:

(a) Resulted from:

(1) Erroneous payments made under the Civil Service Retirement or the Federal Employees' Retirement Systems; or

(2) Unpaid health or life insurance premiums due under the Federal Employees' Health Benefits or Federal Employees' Group Life Insurance Programs; or

(3) Any other statute administered by the Commission;

(b) Is an obligation of a debtor;

(c) Except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Is at least \$25.00;

(e) With respect to which the individual's rights described in the collection of debts owed to the Civil Service Retirement and Disability Fund (5 CFR 831.1301 through 831.1309) have been exhausted;

(f) With respect to which either:

(1) The Commission's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) The Commission can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Is not eligible for administrative offset under 31 U.S.C. 3716(a) because of 31 U.S.C. 3716(c)(2), or cannot currently be collected as an administrative offset by the Commission under 31 U.S.C. 3716(a) against amounts payable to the debtor by the Commission; and

(i) Has been disclosed by the Commission to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of

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15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.

### § 204.52 Notification of intent to collect.

(a) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after the Commission makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by IRS tax refund offset.

(b) *Contents of notice.* The Commission's notice of intent to collect by IRS tax refund offset (Notice of Intent) will state:

- (1) The amount of the debt;
- (2) That unless the debt is repaid within 60 days from the date of the Commission's Notice of Intent, the Commission intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as a Federal income tax refund by an amount equal to the amount of the debt and all accumulated interest and other charges;
- (3) A mailing address for forwarding any written correspondence and a contact name and a telephone number for any questions; and
- (4) That the debtor may present evidence to the Commission that all or part of the debt is not past due or legally enforceable by:
  - (i) Sending a written request for a review of the evidence to the address provided in the notice;
  - (ii) Stating in the request the amount disputed and the reasons why the debtor believes that the debt is not past due or is not legally enforceable; and
  - (iii) Including in the request any documents that the debtor wishes to be considered or stating that the additional information will be submitted within the remainder of the 60-day period.

### § 204.53 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, the Commission must have used a mailing address for the debtor obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) within a period of one year preceding

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the attempt to notify the debtor, unless the Commission received clear and concise notification from the debtor that notices from the agency are to be sent to an address different from the address obtained from IRS. Clear and concise notice means that the debtor has provided the agency with written notification, including the debtor's name and identifying number (as defined in 26 CFR 301.6109-1), and the debtor's intent to have the agency notices sent to the new address.

### § 204.54 Commission action as a result of consideration of evidence submitted in response to the notice of intent.

(a) *Consideration of evidence.* If, as a result of the Notice of Intent, the Commission receives notice that the debtor will submit additional evidence or receives additional evidence from the debtor within the prescribed time period, any notice to the IRS will be stayed until the Commission can:

- (1) Consider the evidence presented by the debtor; and
- (2) Determine whether or not all or a portion of the debt is still past due and legally enforceable; and
- (3) Notify the debtor of its determination.

(b) *Notification to the debtor.* Following review of the evidence, the Commission's designee will issue a written decision notifying the debtor whether the Commission has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable. The notice will advise the debtor of any further action to be taken and explain the supporting rationale for the decision.

(c) *Commission action on the debt.* (1) The Commission will notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund if it sustains its decision that the debt is past-due and legally enforceable. The Commission will also notify the debtor whether the amount of the debt remains the same or is modified; and

(2) The Commission will not refer the debt to the IRS for offset against the debtor's Federal income tax refund if it reverses its decision that the debt is past due and legally enforceable.